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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,857	09/25/2003	Kenny E. McCracken	ITW-14145	9647
44702	7590	04/03/2006	EXAMINER	
OSTRAGER CHONG FLAHERTY & BROITMAN PC 250 PARK AVENUE, SUITE 825 NEW YORK, NY 10177			PASCUA, JES F	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 04/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/671,857

Applicant(s)

MCCRACKEN ET AL.

Examiner

Jes F. Pascua

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 17-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 31-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/25/03.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-16 and 31-34, drawn to a reclosable package, classified in class 383, subclass 61.2.
  - II. Claims 17-30, drawn to a method of manufacture, classified in class 493, subclass unknown.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different method such as partially joining the top film to the bottom film prior to joining the zipper to the films.

3. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

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4. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

5. During a telephone conversation with applicant's representative, Mr. Dennis M. Flaherty, on 03/29/2006 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-16 and 31-34. Affirmation of this election must be made by applicant in replying to this Office action. Claims 17-30 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 31-34 are rejected under 35 U.S.C. 102(a) and 102(e) as being clearly anticipated by U.S. Patent No. 6,616,333 to Kinigakis et al. (Kinigakis et al. '333).

As a note, the line of weakened tear resistance 212, 264 in Kinigakis et al. '333 is considered to be "across a corner" of the header to the same degree applicant defines the metes and bounds of the corner of the header in the claims.

9. Claims 1, 2, 4, 6-8, 10, 13 and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,786,640 to Schneider et al. (Schneider et al. '640)

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

As a note, the cutout 50', 50" in Schneider et al. '640 is considered to be "across a corner" of the header to the same degree applicant defines the metes and bounds of the corner of the header in the claims.

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10. Claims 1-4, 6, 11-16, 31 and 32 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Patent No. 5,442,154 to Hustad et al. (Hustad et al. '154)

As a note, the cutout 46 and the line of weakened tear resistance 34 in Hustad et al. '154 is considered to be "across a corner" of the header to the same degree applicant defines the metes and bounds of the corner of the header in the claims.

Regarding claim 3, Hustad et al. '154 discloses an area 20 where the films 12 and 14 are not sealed together (column 3, lines 65-68), thus meeting the recitation "wherein the ends of said header are not sealed".

### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hustad et al. '154.

Hustad et al. '154 discloses the claimed invention except for the zipper strips of the closure 48 being flangeless zipper strips. It would have been an obvious matter of design choice to use flangeless zipper strips for the closure 48 of Hustad et al. '154, since applicant has not disclosed that flangeless zipper strips solves any stated problem or is for any particular purpose and it appears that the Hustad et al. '154 invention would perform equally well with flangeless zipper strips.

13. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hustad et al. '154.

Hustad et al. '154 discloses the claimed invention except for the weakened line of tear resistance 34 being a line of perforations instead of a scoreline. It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the line of perforations in Hustad et al. '154 with a scoreline since the Examiner takes Official Notice of the equivalence of lines of perforations and scorelines for their use in the package art and the selection of any of these known equivalents to allow the tearing away of a corner portion in Hustad et al. '154 would be within the level of ordinary skill in the art.

14. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schneider et al. '640.

Schneider et al. '640 discloses the claimed invention except for the weakened line of tear resistance 24 being a line of perforations instead of a scoreline. It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the line of perforations in Schneider et al. '640 with a scoreline since the Examiner takes Official Notice of the equivalence of lines of perforations and scorelines for their use in the package art and the selection of any of these known equivalents to allow the removal of the header below the interlocked profiles in Schneider et al. '640 would be within the level of ordinary skill in the art.

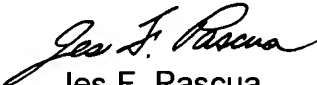
**Conclusion**

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jes F. Pascua  
Primary Examiner  
Art Unit 3727

JFP